

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:18-cv-00117-EGS-GMH**

PUBLIC CITIZEN FOUNDATION v. UNITED STATES
DEPARTMENT OF LABOR et al
Assigned to: Judge Emmet G. Sullivan
Referred to: Magistrate Judge G. Michael Harvey
Cause: 05:552 Freedom of Information Act

Date Filed: 01/19/2018
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: Federal Question

Plaintiff

PUBLIC CITIZEN FOUNDATION

represented by **Michael T. Kirkpatrick**
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street, NW
Washington, DC 20009
(202) 588-7728
Fax: (202) 588-7795
Email: mkirkpatrick@citizen.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Patrick D. Llewellyn
CAMPAIGN LEGAL CENTER
1101 14th Street NW
Ste 400
Washington, DC 20005
202-736-2200
Email: pllewellyn@campaignlegalcenter.org
TERMINATED: 04/02/2020
PRO HAC VICE

Sean M. Sherman
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street, NW
Washington, DC 20009
(202) 588-7739
Email: ssherman@citizen.org
TERMINATED: 11/29/2018

V.

Defendant

**UNITED STATES DEPARTMENT
OF LABOR**

represented by **Jason Todd Cohen**
U.S. DEPARTMENT OF JUSTICE
175 N Street, NE
Washington, DC 20002
202-514-0335
Fax: 202-616-4473
Email: jason.t.cohen@usdoj.gov
TERMINATED: 11/24/2019
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sean Michael Tepe
U.S. DEPARTMENT OF JUSTICE
555 Fourth Street, NW
Washington, DC 20530
(202) 252-2533
Fax: (202) 252-2599
Email: sean.tepe@usdoj.gov
LEAD ATTORNEY

Defendant**OCCUPATIONAL SAFETY AND
HEALTH ADMINISTRATION**

represented by **Jason Todd Cohen**
 (See above for address)
TERMINATED: 11/24/2019
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sean Michael Tepe
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/19/2018	<u>1</u>	COMPLAINT against ALL DEFENDANTS (Filing fee \$ 400 receipt number 0090-5293649) filed by PUBLIC CITIZEN FOUNDATION. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons, # <u>3</u> Summons, # <u>4</u> Summons, # <u>5</u> Summons)(Sherman, Sean) (Entered: 01/19/2018)
01/19/2018		Case Assigned to Judge Emmet G. Sullivan. (zmd) (Entered: 01/22/2018)
01/21/2018	<u>2</u>	NOTICE of Appearance by Michael T. Kirkpatrick on behalf of All Plaintiffs (Kirkpatrick, Michael) (Entered: 01/21/2018)
01/22/2018	<u>3</u>	SUMMONS (4) Issued Electronically as to OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, U.S. Attorney and U.S. Attorney General (Attachments: # <u>1</u> Notice and Consent) (zmd) (Entered: 01/22/2018)
01/23/2018	<u>4</u>	STANDING ORDER: The parties are directed to read the attached Standing Order Governing Civil Cases Before Judge Emmet G. Sullivan in its entirety upon receipt. The parties are hereby ORDERED to comply with the directives in the attached Standing Order. Signed by Judge Emmet G. Sullivan on 01/23/18. (Attachment: # <u>1</u> Exhibit 1) (mac) (Entered: 01/23/2018)
02/01/2018	<u>5</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 1/22/2018. Answer due for ALL FEDERAL DEFENDANTS by 2/21/2018. (Sherman, Sean) (Entered: 02/01/2018)
02/01/2018	<u>6</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 1/29/2018. (Sherman, Sean) (Entered: 02/01/2018)
02/01/2018	<u>7</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION served on 1/29/2018 (Sherman, Sean) (Entered: 02/01/2018)
02/01/2018	<u>8</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. UNITED STATES DEPARTMENT OF LABOR served on 1/29/2018 (Sherman, Sean) (Entered: 02/01/2018)
02/21/2018	<u>9</u>	NOTICE of Appearance by Jason Todd Cohen on behalf of All Defendants (Cohen, Jason) (Entered: 02/21/2018)
02/21/2018	<u>10</u>	ANSWER to <u>1</u> Complaint by OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR.(Cohen, Jason) Modified to add link on 2/22/2018 (znmw). (Entered: 02/21/2018)
03/07/2018		MINUTE ORDER. Plaintiff brings this action pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. The parties are directed to meet and confer and propose a joint scheduling order for further proceedings in this case by no later than April 13, 2018. The parties' joint proposed scheduling order shall address the following: (1) the status of plaintiff's FOIA request; (2) the anticipated number of documents responsive

		to plaintiff's FOIA request; (3) the anticipated date(s) for release of documents responsive to plaintiff's FOIA request; (4) whether a motion for an Open America stay is likely in this case; (5) whether a Vaughn index will be required in this case; (6) whether this case would benefit from referral to a magistrate judge or the District Court Mediation Program for purposes of settlement; and (7) a proposed briefing schedule for dispositive motions, if applicable. If the parties are unable to agree on a joint recommendation, the joint proposed scheduling order shall include each party's individual recommendations. Signed by Judge Emmet G. Sullivan on March 7, 2018. (lcegs2) (Entered: 03/07/2018)
03/07/2018		Set/Reset Deadlines: Joint Proposed Scheduling Order due by 4/13/2018. (mac) (Entered: 03/07/2018)
04/13/2018	<u>11</u>	PROPOSED BRIEFING SCHEDULE (<i>Joint</i>) and Proposed Order by PUBLIC CITIZEN FOUNDATION. (Attachments: # <u>1</u> Text of Proposed Order)(Sherman, Sean) (Entered: 04/13/2018)
04/15/2018		MINUTE ORDER. In view of the parties' joint status report, the parties are directed to comply with the following schedule: plaintiff shall file its amended complaint by no later than April 17, 2018; defendants' motion for summary judgment and Vaughn index shall be filed by no later than May 25, 2018; plaintiff's combined opposition and cross-motion for summary judgment shall be filed by no later than June 25, 2018; defendants' combined reply and opposition to plaintiff's cross-motion shall be filed by no later than August 1, 2018; and plaintiff's reply in support of its cross-motion shall be filed by no later than August 22, 2018. Signed by Judge Emmet G. Sullivan on April 15, 2018. (lcegs2) (Entered: 04/15/2018)
04/16/2018		Set/Reset Deadlines: Amended Complaint due by 4/17/2018. Defendants Motion for Summary Judgment and Vaughn Index due by 5/25/2018. Plaintiff's Combined Opposition And Cross-Motion For Summary Judgment due by 6/25/2018. Defendants' Combined Reply And Opposition To Plaintiff's Cross-Motion due by 8/1/2018. Plaintiff's Reply In Support Of Its Cross-Motion due by 8/22/2018. (mac) (Entered: 04/16/2018)
04/16/2018	<u>12</u>	AMENDED COMPLAINT against All Defendants filed by PUBLIC CITIZEN FOUNDATION.(Sherman, Sean) (Entered: 04/16/2018)
05/25/2018	<u>13</u>	Consent MOTION for Extension of Time to <i>File Brief and to Amend Briefing Schedule</i> by UNITED STATES DEPARTMENT OF LABOR (Attachments: # <u>1</u> Text of Proposed Order)(Cohen, Jason) (Entered: 05/25/2018)
06/01/2018	<u>14</u>	MOTION for Summary Judgment by OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Statement of Facts Not in Dispute, # <u>3</u> Exhibit 1 – Declaration of Amanda L. Edens, # <u>4</u> Exhibit 2 – Declaration of Thomas Galassi, # <u>5</u> Text of Proposed Order)(Cohen, Jason) (Entered: 06/01/2018)
06/11/2018		MINUTE ORDER granting <u>13</u> defendant's consent motion for extension of the briefing schedule. The parties are directed to comply with the following briefing schedule: (1) plaintiff's combined opposition and cross-motion for summary judgment shall be filed by no later than June 29, 2018; defendant's combined reply and opposition to plaintiff's cross-motion shall be filed by no later than August 10, 2018; and plaintiff's reply in support of its cross-motion shall be filed by no later than August 31, 2018. Signed by Judge Emmet G. Sullivan on June 11, 2018. (lcegs2) (Entered: 06/11/2018)
06/12/2018		Set/Reset Deadlines: Plaintiff's Combined Opposition And Cross-Motion For Summary Judgment due by 6/29/2018. Defendant's Combined Reply And Opposition To Plaintiff's Cross-Motion due by 8/10/2018. Plaintiff's Reply In Support Of Its Cross-Motion due by 8/31/2018. (mac) (Entered: 06/12/2018)
06/29/2018	<u>15</u>	MOTION for Summary Judgment by PUBLIC CITIZEN FOUNDATION (Attachments: # <u>1</u> Declaration of David Michaels, PHD, MPM, # <u>2</u> Declaration of Eric Frumin, # <u>3</u> Declaration of Margaret (Peg) Seminario, MS, # <u>4</u> Text of Proposed Order)(Sherman, Sean) (Entered: 06/29/2018)

06/29/2018	<u>16</u>	Memorandum in opposition to re <u>14</u> MOTION for Summary Judgment <i>and in Support of Plaintiff's Motion for Summary Judgment</i> filed by PUBLIC CITIZEN FOUNDATION. (Attachments: # <u>1</u> Declaration of David Michaels, PHD, MPM, # <u>2</u> Declaration of Eric Frumin, # <u>3</u> Declaration of Margaret (Peg) Seminario, MS, # <u>4</u> Text of Proposed Order)(Sherman, Sean) (Entered: 06/29/2018)
08/08/2018	<u>17</u>	Consent MOTION for Extension of Time to File Response/Reply as to <u>15</u> MOTION for Summary Judgment , <u>14</u> MOTION for Summary Judgment by UNITED STATES DEPARTMENT OF LABOR (Attachments: # <u>1</u> Text of Proposed Order)(Cohen, Jason) (Entered: 08/08/2018)
08/10/2018		MINUTE ORDER granting <u>17</u> defendant's consent motion for extension of time. Defendant shall file its combined reply in support of its motion for summary judgment and opposition to plaintiff's cross-motion for summary judgment by no later than August 17, 2018. Plaintiff shall file its reply in support of its cross-motion by no later than September 7, 2018. Signed by Judge Emmet G. Sullivan on 8/10/2018. (lcegs2) (Entered: 08/10/2018)
08/13/2018		Set/Reset Deadlines: Defendant Combined Reply In Support Of Its Motion For Summary Judgment And Opposition To Plaintiff's Cross-Motion For Summary Judgment due by 8/17/2018. Plaintiff Reply In Support Of Its Cross-Motion due by 9/7/2018. (mac) (Entered: 08/13/2018)
08/17/2018	<u>18</u>	REPLY to opposition to motion re <u>14</u> MOTION for Summary Judgment filed by OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR. (Attachments: # <u>1</u> Supplemental Declaration of Thomas Galassi, # <u>2</u> Defendant's Reply to Counter-Statement of Material Facts)(Cohen, Jason) (Entered: 08/17/2018)
08/17/2018	<u>19</u>	Memorandum in opposition to re <u>15</u> MOTION for Summary Judgment (<i>Duplicate Filing of ECF No. 18</i>) filed by OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR. (Attachments: # <u>1</u> Supplemental Declaration of Thomas Galassi, # <u>2</u> Defendant's Reply to Counter-Statement of Material Facts)(Cohen, Jason) (Entered: 08/17/2018)
09/05/2018	<u>20</u>	REPLY to opposition to motion re <u>15</u> MOTION for Summary Judgment filed by PUBLIC CITIZEN FOUNDATION. (Sherman, Sean) (Entered: 09/05/2018)
10/22/2018	<u>21</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by PUBLIC CITIZEN FOUNDATION (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Sherman, Sean) (Entered: 10/22/2018)
11/05/2018	<u>22</u>	RESPONSE re <u>21</u> NOTICE OF SUPPLEMENTAL AUTHORITY filed by OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR. (Attachments: # <u>1</u> Supplemental Declaration of Amanda L. Edens)(Cohen, Jason) (Entered: 11/05/2018)
11/29/2018	<u>23</u>	NOTICE OF WITHDRAWAL OF APPEARANCE as to PUBLIC CITIZEN FOUNDATION. Attorney Sean M. Sherman terminated. (Sherman, Sean) (Entered: 11/29/2018)
01/07/2019		MINUTE ORDER REFERRING CASE to a Magistrate Judge for full case management, up to but excluding trial pursuant to Local Civil Rule 72.2. This includes, with respect to pending potentially dispositive motions, the preparation of a report and recommendation pursuant to Local Civil Rule 72.3. The parties are reminded, that pursuant to Local Civil Rule 73.1, the parties may consent to the assignment of this action to a magistrate judge for all purposes, including trial. Consent of the district court judge is not necessary. Signed by Judge Emmet G. Sullivan on 1/7/2019. (lcegs1) (Entered: 01/07/2019)
01/07/2019		MINUTE ORDER STAYING CASE. In view of the referral of this case to a Magistrate Judge for full case management, proceedings before Judge Emmet G. Sullivan are hereby STAYED. Signed by Judge Emmet G. Sullivan on 1/7/2019. (lcegs1) (Entered: 01/07/2019)
01/07/2019		CASE RANDOMLY REFERRED to Magistrate Judge G. Michael Harvey for full case management, up to but excluding trial. (zad) (Entered: 01/08/2019)

03/04/2019	<u>24</u>	NOTICE of Pending Supreme Court Case by OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR (Attachments: # <u>1</u> Food Marketing Inst. v. Argus Leader Media d/b/a Argus Leader, No. 18-481 (U.S.), Brief for Petitioner)(Cohen, Jason) (Entered: 03/04/2019)
06/21/2019	<u>25</u>	NOTICE of Appearance by Patrick D. Llewellyn on behalf of PUBLIC CITIZEN FOUNDATION (Llewellyn, Patrick) (Entered: 06/21/2019)
07/02/2019	<u>26</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by PUBLIC CITIZEN FOUNDATION (Kirkpatrick, Michael) (Entered: 07/02/2019)
10/30/2019		MINUTE ORDER. There will be a telephone conference before the undersigned on October 31, 2019, at 1:00 p.m. Call in information has been provided to the parties by Chambers. Telephone Conference set for 10/31/2019 at 01:00 PM in Courtroom 6 before Magistrate Judge G. Michael Harvey. SO ORDERED. Signed by Magistrate Judge G. Michael Harvey on 10/30/19. (MFB) (Entered: 10/30/2019)
10/31/2019		Minute Entry for proceedings held before Magistrate Judge G. Michael Harvey: Telephone Conference held on 10/31/2019. The Court Will Enter An Order. (Court Reporter FTR GOLD.)(FTR Time Frame: 1:05:00 – 1:26:01) (mac) (Entered: 10/31/2019)
10/31/2019	<u>27</u>	ORDER denying without prejudice <u>14</u> Motion for Summary Judgment; denying <u>15</u> Motion for Summary Judgment. Signed by Magistrate Judge G. Michael Harvey on 10/31/19. (lckt) (Entered: 10/31/2019)
11/01/2019		Set/Reset Deadlines: Defendant Renewed Motion For Summary Judgment due by 11/25/2019. Plaintiff Response To Defendants Renewed Motion For Summary Judgment And Renewed Cross-Motion For Summary Judgment due by 12/9/2019. Defendants Response To Plaintiff's Renewed Cross-Motion For Summary Judgment And Reply To Plaintiff's Response To Defendants' Renewed Motion For Summary Judgment due by 12/20/2019. Plaintiff Reply, If Any, To Defendants Response To Plaintiff's Renewed Cross-Motion For Summary Judgment due by 01/06/2020. (mac) (Entered: 11/01/2019)
11/24/2019	<u>28</u>	NOTICE OF SUBSTITUTION OF COUNSEL by Sean Michael Tepe on behalf of All Defendants Substituting for attorney Jason Cohen (Tepe, Sean) (Entered: 11/24/2019)
11/26/2019	<u>29</u>	MOTION for Summary Judgment <i>Renewed</i> by OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Statement of Facts, # <u>3</u> Text of Proposed Order, # <u>4</u> Declaration Meilinger Decl, # <u>5</u> Declaration Edens Decl, # <u>6</u> Declaration Kapust Decl and Ex A-D, # <u>7</u> Exhibit Kapust Decl Ex E, # <u>8</u> Exhibit Kapust Decl Ex F-H)(Tepe, Sean) (Entered: 11/26/2019)
12/09/2019	<u>30</u>	Cross MOTION for Summary Judgment by PUBLIC CITIZEN FOUNDATION (Attachments: # <u>1</u> Declaration of Michael A. Carome, # <u>2</u> Declaration of Eric Frumin, # <u>3</u> Declaration of David Michaels, # <u>4</u> Declaration of Margaret Seminario, # <u>5</u> Text of Proposed Order)(Llewellyn, Patrick) (Entered: 12/09/2019)
12/09/2019	<u>31</u>	Memorandum in opposition to re <u>29</u> MOTION for Summary Judgment <i>Renewed</i> filed by PUBLIC CITIZEN FOUNDATION. (Attachments: # <u>1</u> Declaration of Michael A. Carome, # <u>2</u> Declaration of Eric Frumin, # <u>3</u> Declaration of David Michaels, # <u>4</u> Declaration of Margaret Seminario, # <u>5</u> Text of Proposed Order)(Llewellyn, Patrick) (Entered: 12/09/2019)
12/20/2019	<u>32</u>	REPLY to opposition to motion re <u>29</u> MOTION for Summary Judgment <i>Renewed</i> filed by OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR. (Attachments: # <u>1</u> Statement of Facts)(Tepe, Sean) (Entered: 12/20/2019)
12/20/2019	<u>33</u>	Memorandum in opposition to re <u>30</u> Cross MOTION for Summary Judgment filed by OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR. (Attachments: # <u>1</u> Statement of Facts)(Tepe, Sean) (Entered: 12/20/2019)
01/02/2020	<u>34</u>	REPLY to opposition to motion re <u>30</u> Cross MOTION for Summary Judgment filed by PUBLIC CITIZEN FOUNDATION. (Kirkpatrick, Michael) (Entered: 01/02/2020)

04/02/2020	<u>35</u>	NOTICE OF WITHDRAWAL OF APPEARANCE as to PUBLIC CITIZEN FOUNDATION. Attorney Patrick D. Llewellyn terminated. (Llewellyn, Patrick) (Entered: 04/02/2020)
06/05/2020	<u>36</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by PUBLIC CITIZEN FOUNDATION (Attachments: # <u>1</u> Exhibit Decision in CIR v. DOL, No. 18-2414 (N.D. Cal. June 4, 2020))(Kirkpatrick, Michael) (Entered: 06/05/2020)
06/23/2020	<u>37</u>	REPORT AND RECOMMENDATION re <u>29</u> MOTION for Summary Judgment <i>Renewed</i> filed by UNITED STATES DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <u>30</u> Cross MOTION for Summary Judgment filed by PUBLIC CITIZEN FOUNDATION. Signed by Magistrate Judge G. Michael Harvey on 6/23/20. (lckt) (Entered: 06/23/2020)
07/01/2020	<u>38</u>	MOTION for Extension of Time to <i>Object to Report and Recommendation</i> by OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR (Tepe, Sean) (Entered: 07/01/2020)
07/01/2020	<u>39</u>	Memorandum in opposition to re <u>38</u> MOTION for Extension of Time to <i>Object to Report and Recommendation</i> filed by PUBLIC CITIZEN FOUNDATION. (Attachments: # <u>1</u> Text of Proposed Order)(Kirkpatrick, Michael) (Entered: 07/01/2020)
07/01/2020		MINUTE ORDER granting in part and denying in part <u>38</u> MOTION for Extension of Time to Object to Report and Recommendation. FOIA's "statutory goal efficient, prompt, and full disclosure of information can be frustrated by agency actions that operate to delay the ultimate resolution of the disclosure request. Aug. v. Fed. Bureau of Investigation, 328 F.3d 697, 699 (D.C. Cir. 2003). A delay in the adjudication of this matter should not be based on one party's litigation strategy. However, in view of Defendant's competing deadlines, parties Shall file any Objections to the Magistrates Report & Recommendations by no later than July 21, 2020. Signed by Judge Emmet G. Sullivan on 7/1/2020. (lcegs2) (Entered: 07/01/2020)